
(2018) 03 J&K CK 0042

In the Jammu And Kashmir High Court

Case No : 561-A No. 23 OF 2018, MP No. 01 OF 2018

GULDARSHAN SINGH AND ANR

APPELLANT

Vs

STATE OF JAMMU & KASHMIR AND ORS

RESPONDENT

Date of Decision : 23-03-2018

Acts Referred:

Jammu and Kashmir State Ranbir Penal Code, 1989 — Section 34, 323, 325, 341
Code of Criminal Procedure, 1973 — Section 561A

Citation : (2018) 03 J&K CK 0042

Hon'ble Judges : JANAK RAJ KOTWAL

Bench : Single Bench

Final Decision : Dismissed

Judgement

Heard.Â

In FIR No. 17/2014 of Police Station, Akhnoor, police filed charge-sheet against two persons, herein respondent Nos. 7 and 8 and learned trial

Magistrate framed charge under sections 341, 323, 325/34 RPC against them on 09.11.2016. At this stage PWs Guldarshan Singh and Ranbir Singh

moved an application seeking a direction to the police to reinvestigate the case. Learned trial Magistrate dismissed this application on 20.11.2017

taking the view that such a direction was not permissible in view of the Honâ??ble Supreme Court judgment in case, titled, Amrutbhai Shambhubhai

Patel v. Sumanbhai Kantibhai Patel & Ors. 2017(3) Crimes 185. Order dated 20.11.2017 is impugned in this petition under section 561-A Cr.P.C. by

PWs 1 and 2.Â

Legal position on the point has been clearly laid down by the Supreme Court in the aforementioned judgment and has been correctly applied by the

learned Magistrate. Supreme Court has held:

In contradistinction, Sections 156, 190, 200, 202 and 204 of the Cr.P.C clearly outline the powers of the Magistrate and the courses open for him to chart in the matter of directing investigation, taking of cognizance, framing of charge, etc. Though the Magistrate has the power to direct investigation under Section 156(3) at the pre-cognizance stage even after a charge-sheet or a closure report is submitted, once cognizance is taken and the accused person appears pursuant thereto, he would be bereft of any competence to direct further investigation either suo motu or acting on the request or prayer of the complainant/informant. The direction for investigation by the Magistrate under Section 202, while dealing with a complaint, though is at a post-cognizance stage, it is in the nature of an inquiry to derive satisfaction as to whether the proceedings initiated ought to be furthered or not. Such a direction for investigation is not in the nature of further investigation, as contemplated under Section 173(8) of the Code. If the power of the Magistrate, in such a scheme envisaged by the Cr.P.C to order further investigation even after the cognizance is taken, accused persons appear and charge is framed, is acknowledged or approved, the same would be discordant with the state of law, as enunciated by this Court and also the relevant layout of the Cr.P.C. adumbrated hereinabove. Additionally had it been the intention of the legislature to invest such a power, in our estimate, Section 173(8) of the Cr.P.C would have been worded accordingly to accommodate and ordain the same having regard to the backdrop of the incorporation thereof. In a way, in view of the three options open to the Magistrate, after a report is submitted by the police on completion of the investigation, as has been amongst authoritatively enumerated in Bhagwant Singh (supra), the Magistrate, in both the contingencies, namely; when he takes cognizance of the offence or discharges the accused, would be committed to a course, whereafter though the investigating agency may for good reasons inform him and seek his permission to conduct further investigation, he suo motu cannot embark upon such a step or take that initiative on the request or prayer made by the complainant/informant. Not only such power to the Magistrate to direct further investigation suo motu or on the request or prayer of the complainant/informant after cognizance is taken and the accused person appears, pursuant to the process, issued or is discharged is incompatible with the statutory design and dispensation, it would even otherwise render the provisions of Sections 311 and 319 Cr.P.C., whereunder

any witness can be summoned by a Court and a person can be issued notice to stand trial at any stage, in a way redundant. Axiomatically, thus the

impugned decision annulling the direction of the learned Magistrate for further investigation is unexceptional and does not merit any interference. Even

otherwise on facts, having regard to the progression of the developments in the trial, and more particularly, the delay on the part of the informant in

making the request for further investigation, it was otherwise not entertainable as has been rightly held by the High Court.â??

In view of the clear legal position, impugned order does not deserve any indulgence by this Court and this petition is, therefore, dismissed.Â

Record of the trial court along with a copy of this order be sent back.